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December 15, 2004

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Jeff S. Jordan, Esq.  
Office of General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

**VIA HAND DELIVERY**

Re: Matter Under Review 5595

Dear Mr. Jordan:

This office represents radio station WFBQ of Indianapolis, Indiana, in the above-captioned matter. WFBQ is owned by Capstar Radio Operating Company, a subsidiary of Clear Channel Communications, Inc.<sup>1</sup>

This letter responds to the complaint filed by Jennifer L. Messer regarding a paid advertisement for the Indy 1500 Gun & Knife Show aired on WFBQ. The complaint alleges that WFBQ aired an advertisement that contained a reference to presidential candidate John Kerry. The complaint alleges that a notice is required under 11 C.F.R. § 110.11(b)(3), which requires a political committee that sponsors a radio or television advertisement to include a sponsorship notice. WFBQ is not a political committee, and, on information and belief, neither is the Indy 1500 Gun and Knife Show or its sponsor, World Class Gun Shows, Inc.<sup>2</sup>

Although not alleged in the complaint, FEC regulations also require the sponsor of a radio advertisement that expressly advocates the election or defeat of any candidate, solicits any political contributions, or constitutes an "electioneering communication" to include a sponsorship notice. See 11 C.F.R. § 110.11(a)(1), (2), (3) & (4).

As a threshold matter, WFBQ did not sponsor or pay for the advertisement.<sup>3</sup> WFBQ merely ran the spot for a fee paid by World Class Shows, a regular advertiser of gun shows for about ten years.<sup>4</sup> Accordingly, even if a sponsorship notice were required on the advertisement in question, FEC regulations do not

<sup>1</sup> See Exhibit 1, Affidavit of Christopher Wheat at ¶ 2 ("Wheat Aff.").

<sup>2</sup> Wheat Aff. at ¶¶ 2 & 3.

<sup>3</sup> Wheat Aff. at ¶ 4.

<sup>4</sup> Wheat Aff. at ¶¶ 3 & 4.

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2004 DEC 15 P 5: 34

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Jeff S. Jordan, Esq.  
December 15, 2004  
Page 2

impose the responsibility for a sponsorship notice upon a radio station or other media outlet that sells space. The sponsor that pays for the advertisement bears that responsibility under the FEC's regulatory system. *See, e.g.*, MUR 5147, First General Counsel's Report (Apr. 22, 2002) at p. 11 ("Entercom's ownership of the radio stations on which the advertisement aired, and its failure to treat the advertisement as a political advertisement, does not implicate Entercom in any violation of the Act or regulations."); MUR 3682, First General Counsel's Report (Mar. 4, 1994) at p. 10-11 & n. 7 ("Under the Act, however, it is [the ad sponsors'] obligation to ensure that their advertisement includes the appropriate disclaimer.... This Office also recommends that the Commission find no reason to believe that the Jewish Exponent violated 2 U.S.C. § 441d(a).... Because 2 U.S.C. § 441d(a) applies only to the person making the expenditure ..., this section does not apply to the Jewish Exponent.").

Even if WFBQ were responsible for sponsorship notices, however, it is doubtful that the advertisement in question required a disclaimer notice under 11 C.F.R. § 110.11. Enclosed is a true and correct copy of the audio advertisement WFBQ ran on behalf of World Class Shows in October of 2004.<sup>5</sup> The advertisement, which featured a parody of Jimmy Stewart talking to Harvey the rabbit in the movie *Harvey*, contained neither express advocacy nor a solicitation on behalf of any federal candidate.

The complainant may be under the impression that the advertisement constituted an "electioneering communication" under 11 C.F.R. § 100.29(b)(2) because it allegedly referred to presidential candidate John Kerry: "No Harvey ... you just got the new *Kerry* Permit." The context of the advertisement, however, suggests that the reference could just as fairly be interpreted to be a "carry permit," which is a license issued by the government to a citizen authorizing him to carry a firearm. "Carry permit" is a common term among gun vendors and owners. The term "carry" is used throughout Indiana case law and statutes in the context of regulating the use of

<sup>5</sup> Wheat Aff. at ¶ 4 & Attached Compact Disk (WFBQ received only an audio CD of the advertisement. WFBQ never received a written script or transcript of the advertisement. This is customary practice at WFBQ.).

26044140970

Jeff S. Jordan, Esq.  
December 15, 2004  
Page 3

firearms.<sup>6</sup> The term is so common that a Google search of the phrase "carry permit" with the term "Indiana" turns up 8,660 references.<sup>7</sup>

Thus, a fair understanding of the audio, in context, would be the following:

Yeap Harv, I love it out here in the woods. Don't forget we have to get back for this weekend's big Indy 1500 Gun and Knife Show out at the State Fairgrounds. We'll have to allow more time because it's in 2 big buildings cause there's twice as much to see. What's that Harv? When are we going to hunt buffalo? Well that's the reason we came out here so we can hunt the great bison with all the gear we got at the last Indy 1500. Gun and custom skinning knives, spot and scopes, custom loads and rifles... everything for a great hunt. Harv, go over the hill. I think I heard one. Yep folks, Harv might need all those high powered guns and ammo but all I need for ole' baby is just one bullit. Harv what's the matter with you? Why are you so upset? Slow down. You say a slick talkin' guy, wearin' flip flops came up to you before you could shoot? He told you you needed to register your guns and then he'd give 'em back? What? You never saw him or your guns again? You think you got buffaloed? No Harv. You got the new *carry permit*. Celebrity voice and imaginary character impersonated. The Indy 500 Gun, Knife, and Outdoor Show this Friday, Saturday, and Sunday at the State Fairground.

<sup>6</sup> See, e.g., Indiana Code §§ 35-47-2-1 ("a person shall not carry a handgun . . . without a license"); 35-47-2-3 ("A person desiring a license to carry a handgun shall apply to the chief of police . . ."); 35-47-2-4 ("Licenses to carry handguns shall be either qualified or unlimited."); 35-47-2.5-1 ("Indiana residents licensed to carry handguns . . ."); see also *Bell v. Indiana*, No. 49A04-0401-CR-27, 2004 WL 2711059, at \*1 (Ind. App. Nov. 30, 2004) ("Bell had a valid permit to carry a firearm"); *Thurman v. Indiana*, 793 N.E.2d 318, 320 (Ind. App. 2003) ("he did have a permit to carry the weapon").

<sup>7</sup> Exhibit 2, Google Search Result for search of "'carry permit' Indiana" (conducted Dec. 9, 2004). (Included here are the summary for this search result and several pages showing use of the term "carry permit" in the context of gun ownership. Counsel for WFBQ will provide further pages upon request of FEC staff.).

26044140971

Wiley Rein & Fielding LLP

Jeff S. Jordan, Esq.  
December 15, 2004  
Page 4

Accordingly, it does not appear that the advertisement promoting the Indy 1500 Gun & Knife Show required an FEC notice and that no violation of the Federal Election Campaign Act ("the Act") has occurred. In any event, since WFBQ is not responsible for including sponsorship notices in advertisements produced and placed by its customers, we respectfully request that the FEC find no reason to believe WFBQ has violated the Act.

Sincerely,



Jan Witold Baran  
Lee E. Goodman

Enclosures

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**BEFORE THE  
FEDERAL ELECTION COMMISSION**

Re: WFBQ Radio Station &  
World Class Gun Shows, Inc.

)  
) MUR 5595  
)  
)

**Affidavit of Christopher Wheat**

1. My name is Christopher Wheat. I am the General Manager of WFBQ radio station in Indianapolis, Indiana, the respondent in this matter.
2. WFBQ broadcasts on 94.7 MHz FM pursuant to a license issued by the Federal Communications Commission. WFBQ is owned by Capstar Radio Operating Company, which is a subsidiary of Clear Channel Communications, Inc. WFBQ has never been classified as a political committee. WFBQ is not owned or controlled by any political candidate or political party.
3. For approximately ten years, WFBQ has run paid advertisements promoting gun shows for World Class Gun Shows, Inc. During that period, WFBQ has understood World Class Gun Shows to be in the business of sponsoring gun shows in Indianapolis, and has not considered it to be a political committee.
4. From October 26 to October 31, 2004, WFBQ aired an advertisement placed by World Class Gun Shows. WFBQ charged World Class Gun Shows a usual and customary rate for the advertising. The advertisement promoted the Indy 1500 Gun and Knife Show to be held during the weekend of October 29 – 31, 2004. The advertisement was produced by World Class Gun Shows and provided to WFBQ on a compact disk. A true and accurate audio copy of that advertisement on compact disk is attached to this affidavit. World Class Gun Shows did not

26044140974

provide WFBQ a written script or transcript of the text of the advertisement, which is a usual and customary practice.

Under penalty of perjury and any other penalties possibly applicable under law, I swear that the foregoing statements are true to the best of my knowledge, belief, and recollection, and after due investigation of all my records.

Christopher Wheat  
Christopher Wheat

12/13/04  
Dated

Sworn and subscribed to  
Before me this 13th day of  
December, 2004

Sara G. Ritten  
Notary Public

My Commission expires: 7/27/06

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[Preferences](#)**Web**Results 1 - 10 of about 8,660 for "carry permit" indiana. (0.29 seconds)TFA Reciprocity Status... The non-resident, with a valid **carry permit** from any other state, who works in Tennessee and has applied for a Tennessee handgun **carry permit**, may continue to ...www.tennesseefirearms.com/reciprocity/reciprocity.asp - 18k - [Cached](#) - [Similar pages](#)Packing.org Concealed Carry (CCW), Concealed Weapon Permit ...... If you do not have a Concealed **Carry Permit** issued by a California Sheriff or Law Enforcement Agency you can not transport a loaded firearm in a vehicle or on ...www.packing.org/state/stateinfo\_history.jsp?name=peace\_journ\_law&state=5 - 23k - [Cached](#) - [Similar pages](#)Packing.org, the Concealed Carry Database: "Open Carry" (Concealed ...... Our permit is a **carry permit**. So if you want to open carry in Minnesota... ... As far as I know, no one in HI has an open **carry permit** for personal reasons. ...www.packing.org/talk/thread.jsp/32606/ - 26k - [Cached](#) - [Similar pages](#)[ [More results from www.packing.org](#) ]John Lott, Jr. Supports Missouri Concealed Carry... In Virginia as of the beginning of this year, "not a single concealed-**carry permit** holder has committed a violent crime."; After ...www.tsra.com/Lott10.htm - 9k - [Cached](#) - [Similar pages](#)Concealed Carry Conundrum... guns. Essentially, if you have a valid concealed **carry permit** from your home state, it would be good in any of the other 49. Stearns ...www.gunsandammomag.com/in\_the\_field/concealed\_carry\_conundrum/ - 40k - [Cached](#) - [Similar pages](#)Concealed Carry Permit... 1290 Title 21. To obtain a concealed **carry permit** in the state of Oklahoma you must meet certain qualifications and attend a training course conducted by a ...members.fullnet.net/wisely/CCPInfo.html - 11k - [Cached](#) - [Similar pages](#)Department of Safety - Handgun Carry Permits and Reciprocity ...... A Tennessee handgun **carry permit** will be issued in this situation only if the other state has eligibility requirements that are substantially similar to the ...www.tennessee.gov/safety/reciprocity.html - 48k - [Cached](#) - [Similar pages](#)Thirty States... can take the Twin Cities Carry Course as an upgrade to your present training for \$125, you'll need to show me your current Minnesota **carry permit** in order to ...www.ellegon.com/features/data/thirtystates/ - 9k - [Cached](#) - [Similar pages](#)Carrying in Twenty-Eight States... The Minnesota **carry permit** allows you to carry in Alaska, Arizona, Idaho, **Indiana**, Kentucky, Michigan, Missouri, Montana, Oklahoma, Tennessee, Utah, Vermont ...www.ellegon.com/features/data/newhampshire/ - 12k - [Cached](#) - [Similar pages](#)Concealed Handgun Permit - CCW - Concealed Carry Permit - Training ...... Over time, it became somewhat synonymous with "concealed **carry permit**" in

that you often hear someone ask about getting "their CCW". ...  
www.safearms.com/permits.html - 19k - Cached - Similar pages

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Vermont's Concealed Carry Gun Law... (13). b. Colorado. Talk show host (Alan Berg) was gunned down in 1984 after being denied a concealed **carry permit**. (14). c. Wisconsin. ...www simplyweb.net/hpent/Vermont htm - 13k - [Cached](#) - [Similar pages](#)Concealed Weapons Permits

... An individual who wishes to carry a concealed pistol on or about his person or in a vehicle must obtain a Permit to Carry a Concealed Pistol (SDCL 22-14-9). A ...

www sdsos gov/firearms/ - 18k - [Cached](#) - [Similar pages](#)PURPOSE AND SUMMARY... Many Class I states have similar, but not identical, concealed **carry permit** laws, and thus the Attorney General is in the best position to determine which ...

thomas.loc gov/cgi-bin/cpquery/?&amp; db\_id=cp105&amp;r\_n=hr819.105&amp;sel=TOC\_12800&amp; - 15k -

[Cached](#) - [Similar pages](#)USSC Concealed Carry... (13) b. Colorado. Talk show host (Alan Berg) was gunned down in 1984 after being denied a concealed **carry permit**. (14) c. Wisconsin. ...utahshootingsports.com/ussccw.htm - 20k - [Cached](#) - [Similar pages](#)CONCEALED HANDGUN RECIPROCITY IN NORTH CAROLINA... **carry permit** from one of the states on this list, you will be able to possess a concealed handgun while you visit North Carolina. However, while you are in ...www grnc org/reciprocity/reciprocity htm - 17k - [Cached](#) - [Similar pages](#)Reciprocity... (NOTE: Persons with a valid Tennessee Handgun **Carry permit** should contact any ... **carry permits**: ALABAMA, ALASKA, ARIZONA, COLORADO, IDAHO, INDIANA, MONTANA, NEVADA ...www.grnc.org/discussion/\_disc1/00000084.htm - 10k - [Cached](#) - [Similar pages](#)[ [More results from www.grnc.org](#) ]Multistate Concealed Carry... and it is unlawful to carry a loaded rifle or shotgun in a vehicle ... statement: I have been criticized on occasion for being a concealed-**carry permit** holder, and ...www.alpharubicon.com/leo/multistatecarryg htm - 7k - [Cached](#) - [Similar pages](#)PRESS RELEASE: Handgun Carry Permit Training for Missourians ...Handgun **Carry Permit** Training for Missourians Available in Minneapolis

Joel Rosenberg's Twin Cities Carry Course now enables his ...

www prweb com/releases/2004/5/prweb128754.htm - 29k - [Cached](#) - [Similar pages](#)Proposition B: More security or greater danger?: Clear evidence ...... In Virginia as of the beginning of this year, "not a single concealed-**carry permit** holder has committed a violent crime." \* After ...www.junkscience.com/mar99/jr12 htm - 7k - [Cached](#) - [Similar pages](#)Clear Evidence About Missouri's Proposition B

... In Virginia as of the beginning of this year, "not a single concealed-carry permit holder has committed a violent crime " \* After Nevada's first year, "Law ...  
www.mcsn.org/propblott.html - 7k - [Cached](#) - [Similar pages](#)

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## Web

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### Info Needed -- How do I find out if state is pro- Second Amendment ...

... Hey fella you better do some research. This State has been a lot easier to get a **carry permit** in than a lot of the so called gun easy states for a long time ...

www.freerepublic.com/focus/f-bloggers/1136315/posts - 15k - [Cached](#) - [Similar pages](#)

### NRA-ILA :: Fact Sheets

... that does not issue permits would be allowed to carry in any state, under either the state or federal law, if he or she possesses a **carry permit** issued by ...

www.nraila.org/Issues/FactSheets/Read.aspx?ID=18 - 44k - [Cached](#) - [Similar pages](#)

### Shooting stirs fears of vigilante justice

... None of the assault and murder charges filed against concealed- **carry permit** holders resulted in a conviction in 2000, but the statistics do not indicate if ...

www.enquirer.com/editions/2002/01/07/loc\_shooting\_stirs\_fears.html - 43k - [Cached](#) - [Similar pages](#)

### rec.guns FAQ: II.C.1.b. Acquiring a Non-Resident CCW

... administered differently everywhere. In some localities it is very hard to get a concealed **carry permit**, in others, it is fairly easy. ...

www.recguns.com/Sources/II.C1b.html - 31k - [Cached](#) - [Similar pages](#)

### Arizona Gun Owner's Guide Reciprocity List

... portion of the Arizona **carry-permit** program, for the Dept. of Public Safety, to firearms instructors. He is also the attorney I worked with in writing "Gun ...

www.gunlaws.com/agogRL.htm - 11k - [Cached](#) - [Similar pages](#)

### Second Amendment Stuff - The Right To Carry

... who live in states that do not issue permits would be allowed to carry in any state, under either the state or federal law, if they possess a **carry permit**. ...

secondamendmentstuff.com/RightToCarry.htm - 42k - [Cached](#) - [Similar pages](#)

### TheFiringLine Forums - Federal Carry Permit Proven

... Federal **Carry Permit** Proven NEW CASE 5/28/02: Et tu, FEDS? An apparant case of a "crony honorary US Marshall" packin' in DC. For ...

www.thefiringline.com/forums/showthread.php?s=&postid=1019598 - 70k - [Cached](#) - [Similar pages](#)

### Division Overview

... licensing authorities in the states in which they will be traveling to obtain the latest information. QUESTION 5. I have a concealed **carry permit** from one of ...

licgweb.doacs.state.fl.us/news/concealed\_carry.html - 32k - [Cached](#) - [Similar pages](#)

### FAQ - Frequently Asked Questions

... to change in the law? The change is actually minor. We are recommending that the law be amended to requiring the issuing of a concealed **carry permit**, valid for ...

www.mnccrn.org/ccrn\_old/faq/faq.html - 15k - [Cached](#) - [Similar pages](#)

### michigan.htm

... In Idaho, 4% of the population now has a concealed **carry permit**. In Oregon, 2% of the adults in the state are now licensed to carry. ...

www.claytoncramer.com/Michigan.htm - 19k - [Cached](#) - [Similar pages](#)

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